IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3233 of 2002
to
SPECIAL CIVIL APPLICATION No 3240 of 2002

with

SPECIAL CIVIL APPLICATIONS Nos. 3244 of 2002, 3253 of 2002, 3288 of 2002, 3290 of 2002 and 2905 of 2002

with

SPECIAL CIVIL APPLICATIONS Nos. 3184 of 2002 and 2799 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GAYATRI VIDHYAMANDIR & ORS
Versus
GUJARAT SECONDARY EDUCATIONN BOARD & ORS.

Appearance:
MR NV GANDHI, MR P.S. PATEL, MR C.L. SONI and MR. KAMLESH SHETH for the petitioners
MR DIPAK DAVE for MR AD OZA for the RESPONDENT-GUJARAT SECONDARY EDUCATION BOARD
MS. S.B. TRIVEDI, MR KP RAVAL and MR ND GOHIL, AGPs, for the Respondent-State

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CORAM: MR JUSTICE A.R. DAVE

Date of decision: 14/03/2002

ORAL JUDGMENT

Heard learned advocates S/Shri P.S. Patel, C.L. Soni, Kamlesh Sheth and N.V. Gandhi for the petitioners. Learned advocate Shri Dipak Dave for learned advocate Shri A.D. Oza has appeared on caveat on behalf of the Gujarat Secondary Education Board (hereinafter referred to as 'the Board') whereas learned Assistant Government Pleaders Shri K.P. Raval, Ms. Shraddha Trivedi and Shri N.D. Gohil have appeared for the government authorities.

2. As subject-matter in all these petitions is same, at the request of the learned advocates, all these petitions have been heard together. The facts giving rise to the present petitions are as under :

3. The question involved in these petitions is with regard to change of stream after completion of Std. XI. As per the scheme of education framed by the Board, for the purpose of giving Higher Secondary Certificate, examinations are conducted in four different streams, which are as under :

General Stream
Science Stream
Vocational Stream
Post Basic Stream

4. After studying upto Std. X, a student has to select one of the aforementioned streams and a student has to study for 2 years in one stream so as to be eligible to take HSC Examination conducted by the Board. The petitioners in this group of petitions are either students who changed their stream after completion of their studies in Std. XI or are institutions or schools where the students had studied in one stream in Std. XI and thereafter they changed the stream in Std. XII.

5. As applications for appearing at HSC Examination by the students, who had changed their stream after Std. XI, have been rejected by the Board, these petitions have been filed with a prayer that the action whereby the application forms of the concerned students have been rejected should be quashed and set aside and the

concerned students should be permitted to appear at the examination which is to commence on 18.3.2002.

6. It has been submitted by learned advocates S/Shri P.S. Patel and C.L. Soni appearing for the students that the petitioners had undergone requisite training and they are eligible to appear in a particular stream as they had studied in the said stream in Std. XII. According to them, studies prosecuted by the said students in Std. XI in a different stream is not much relevant because the concerned students have to pass their Std. XII examination in a particular stream. To give an illustration, it may be stated that some of the students had studied in post basic stream in Std. XI and thereafter in Std. XII they changed their stream to general stream. Thus, for one year they studied in post basic stream and thereafter they studied in general stream. Thus, it is an undisputed fact that all the students have not studied in a one particular stream for both the years during which they studied in Std. XI and XII or in other words, the students had studied in different streams during the said two years.

7. It has been submitted by the learned advocates that if the petitioners are not permitted to appear at the examination, they would be losing one important year of their life and they will have to appear again in a different stream. It has been submitted that the said students were permitted to change the stream by the institutions where they were prosecuting their studies. It has been submitted that the students were not aware of the fact that it was not open to them to change the stream after passing Std. XI examination. It has been prayed by way of ingterim relief that subject to result of the petitions, the students should be permitted to appear at the examination during pendency of these petitions.

8. It has also been submitted that some of the students got intimation with regard to rejection of their application forms late and therefore they have approached this court in the month of March. Had they been informed earlier, the petitioners could have approached this court at an earlier point of time.

9. Learned advocates S/Shri Kamlesh Sheth and N.V. Gandhi have appeared for the schools where some of the students, who had changed their stream and whose applications for appearing at the examination have been rejected. It has been submitted by the learned advocates that the schools, where the concerned students were

imparted training, were permitted to change the stream and therefore impliedly the students studying in the said schools were permitted to change their stream after completion of their studies in Std. XI. My attention has been drawn by learned advocate Shri Gandhi to an order dated 4.4.2001, which is at Annexure B to Special Civil Application No. 3233 of 2002. According to him, by virtue of the said order, the petitioner school, namely, Shree Gayatri Vidyamandir, was allowed to permit the students to change the stream after they passed Std. XI examination. According to him, the Commissioner, Mid-day Meal Scheme and Schools (hereinafter referred to as 'the Commissioner'), had permitted the said school to change the stream. According to him, it was thus implied that the students of the said school undergoing training in the vocational stream were automatically permitted to study in general stream. He has referred to the conditions incorporated in the said order so as to show that it was open to the said school to impart studies in general stream. Thus, it has been submitted by him that it was open to the said school to teach subjects of general stream and, therefore, the students of the said school were permitted to appear at Std. XII examination in general stream.

10. My attention has also been drawn to the provisions of regulation 19 of the Higher Secondary Certificate Examination Regulations, 1977 (hereinafter referred to as 'the Regulation'). Regulation 19 deals with eligibility of the candidates. It has been stated by the learned advocates that as per the said regulation, all the students, who had given their applications for appearing at Std. XII examination, were eligible to appear at the examination and therefore there was no justifiable reason for cancelling or rejecting the applications submitted by the concerned students.

11. It has been thereafter submitted that by virtue of Resolution dated 7.3.1980, which is at Annexure C to Special Civil Application No. 3233/02, it has been provided that the students, who have undergone 3 years course for diploma studies of banking and accountancy, are permitted to straightway appear at Std. XII examination. Thus, according to Mr. Gandhi, there is a policy to the effect that certain students, even without studying in Std. XI, can be permitted to appear at Std. XII examination. According to the learned advocate, in the instant case, the students have at least studied in Std. XI and, therefore, there is no reason for not permitting them to appear at Std. XII examination.

12. It has been submitted by all the advocates that the students and the schools, that is, all the petitioners, were never informed by the Board that the students cannot change their stream after passing Std. XI. It has been also submitted that in some of the streams almost all subjects are common except a subject or two. Thus, no harm would be caused to the students, if they are permitted to prosecute their studies in Std. XII in a different stream.

13. It has been thereafter submitted by the learned advocates for the petitioners that as per guidelines issued by the Board, if a student has failed in science stream in Std. XII, he can reappear in a common stream without studying in Std.XI again. According to the learned advocates, if in such a case, change of stream is permitted, even in the instant case, the students should be permitted to change the stream.

14. Lastly, it has been submitted that in the past, the Board had permitted some students to change the stream and therefore the petitioners should also be permitted to change the stream.

15. Thus, it has been submitted by the learned advocates appearing for the petitioners that in the interest of the students, they be permitted to appear at Std. XII examination even if they have changed their stream after Std. XI.

16. On the other hand, learned advocate Shri Dipak Dave appearing for the Board has submitted that it would not be open to the concerned students to change their stream after completion of their studies in Std. XI. It has been submitted by him that as per the scheme of Higher Secondary Certification Examination, duration of studies of a particular stream is of 2 years. Unless a student has studied for 2 years in a particular stream and passes the examination, he cannot be given the certificate of HSC examination. According to him, if part of the studies has not been prosecuted by a particular student, he cannot be said to have completed his studies in a particular stream. In other words, if a student has partly studied in general stream and partly studied in vocational stream or post basic stream, he cannot be said to have proficiency in the stream in which he studies in Std. XII as he would not be having sufficient training in a particular stream. He has also drawn my attention to a circular dated 28.11.84 which provides that a student cannot be permitted to change the stream after completion of studies in Std. XI. It has

been thus submitted by the learned advocate appearing for the Board that change of stream is not even permissible according to the policy framed by the Board.

17. The learned advocate appearing for the Board has thereafter submitted that even by an interim order the petitioners should not be permitted to appear at the examination as held by the Hon'ble Supreme Court in the case of CBSC and anr. v. P. Sunil Kumar and ors., (1998) 5 SCC 377. He has also relied upon the judgment delivered by the Hon'ble Supreme Court in the case of L. Muthukumar and anr. v. State of Tamil Nadu and ors., (2000) 7 SCC 618 to submit that unless proper education is imparted, the student cannot be permitted to appear at the examination.

18. It has been thereafter submitted that permission to change the stream was never granted to any student. It has been submitted by the learned advocate that the learned advocates for the petitioners have not pointed out any order whereby the concerned students were permitted to change the stream after completion of their studies in Std. XI.

19. So far as the averment pertaining to regulation 19 of the Regulations is concerned, it has been submitted by the learned advocate for the Board that the said regulation only provides for eligibility for appearing at the examination. If a student has not attended his school for a prescribed period, then such a student may not be permitted to appear at the examination. Thus, even if a student has studied in a particular stream in Std. XII, he may not become eligible on account of some other factors. Regulation 19 thus deals with eligibility and it has nothing to do with regard to change of the stream.

20. Resolution dated 7th March 1980 referred to by the learned advocates for the petitioners is also irrelevant as submitted by the learned advocate for the Board for the reason that the said resolution permits certain students, who have undergone diploma studies of banking or accountancy, to appear straightway at Std. XII examination because the subjects which are studied in Std. XI are studied by such students while undergoing diploma studies of banking or accountancy. The said resolution has, therefore, no relevance and therefore the petitioners cannot rely upon the said resolution also.

21. It has been submitted by the learned advocate for the Board that the policy laid down by the Board is

normally known to all the schools which are permitted to impart education of a particular stream. Circulars and resolutions are issued to them from time to time. In the circumstances, it cannot be said that the petitioner institutions were not aware of the fact that change of stream is not permitted.

22. So far as the averment about guidelines with regard to reappearing at the examination is concerned, it has been submitted that the said guidelines are applicable to those students, who have failed once and they desire to reappear at the examination. Reappearing at the examination and change of stream are different things. In the instant case, the concerned petitioners or students have not made any application for reappearing at Std. XII examination. They are appearing for the first time and therefore the guidelines referred to by the learned advocates for the petitioners are not relevant in the instant case.

23. So far as the past incidents are concerned, it has been submitted by the learned advocate for the Board that the Board might have made a mistake by permitting someone to appear at the examination of Std. XII even if the student had changed the stream. Simply because a mistake was made once by the Board, the Board is not expected to make mistakes again and that too after having full knowledge about the facts of the case.

24. I have heard the learned advocates at length. The examination in question is to commence from 18th March 2002. Though the petitions have been filed at a belated stage, without going into the question of delay, the petitions are heard on merits as question of academic career of several students is involved in these petitions.

25. After hearing the learned advocates and upon perusal of the record and other resolutions referred to by the learned advocates, it is very clear that the students cannot be permitted to change their stream after completion of their studies in Std. XI and if they have changed the stream, they cannot be permitted to appear at Std. XII examination.

26. It is not in dispute that according to the scheme of Higher Secondary Certificate Examination, a student has to study for 2 years in a particular stream. Unless a student has undergone 2 years studies in a particular stream and has passed the examination, he cannot be awarded the certificate of passing HSC examination. If a

student has been given training and education for one year in one particular stream and thereafter, for the rest of the period, he is imparted education and training in a different stream, it cannot be said that the student has undergone training in a one particular stream because in such a case his training is incomplete. If a student studies in general stream in Std. XI and thereafter he studies in Std. XII in science stream, he cannot expect the Board to certify that the student had passed Higher Secondary Certificate Examination in science stream because the student did not study certain subjects of science stream which he was supposed to study in Std. XI. His training would be incomplete in that event and therefore the Board cannot be asked to certify the student as a student of science stream. One should not forget the fact that function of the Board is not to give certificate but is to see that the students are given proper training and education. If without giving proper training or imparting proper education to the student, the student is given a certificate showing that he has passed HSC Examination, the entire object, with which the system works, would be frustrated.

27. In my opinion, it would not be in the interest of the students also to permit them to prosecute their studies in different streams because in such a case the students will not have proficiency in any of the streams. In educational matters, normally this court would not like to interfere with the discipline followed by an institution like the Board. The Board is a body of experts and academicians who know how and what to be taught to a student in a particular stream. If the training imparted to the students is not complete, the studies may not help the students upon completion of the studies and there are all chances that such a student may not get admission in another institution for higher studies and his incomplete studies may hamper his progress in future.

28. My attention has also been drawn to a litigation, which is pending in this court. The said litigation is with regard to similarly situated students, who changed their stream and after they passed the examination, the Board issued show-cause notices to such students calling upon them to show cause as to why the certificates awarded to them should not be taken back. In other words, the studies which they had undergone during Std. XII would become practically useless as the students will have to study again so as to have Higher Secondary Certificate. If the petitions are allowed and the students are permitted to appear at the examination in

question, there would be more litigation because in that event there are all chances that the Board might call upon the said students to show cause as to why their certificates should not be cancelled as it has been done in cases of other students in the past. This would lead to increase in litigation and the students shall be put to difficulties without having any benefit. Of course, some mistakes were committed in the past by the Board by permitting some students to appear at Std. XII examination, though they had hanged their stream after Std. XI. This would not mean that the Board should continue to commit mistakes and even this court would not like to treat those mistakes as precedents so as to permit the Board to commit the mistake again.

29. Learned advocate Shri Gandhi has referred to resolution dated 7.3.1980 whereby in certain ases students can be permitted to appear at Std. XII examination without even passing Std. XI examination provided they have passed diploma examination in accountancy or banking. The said resolution would not help the students as they have not passed three years' diploma examination in banking or accountancy. Logic behind having such a policy is quite simple. If a student having diploma in the subject of banking or accountancy has studied all the subjects he studies in Sd. XI, the Board might permit such a student to appear at Std. XII examination. In such a case, the diploma holder would be well versed in the subjects taught in Std. XI and therefore the Board might exempt such a diploma holder from studying in Std. XI. No such exemption has been given in the instant case to the students who are concerned with these petitions. For this reason, in my opinion, reference to the resolution referred to by learned advocate Shri Gandhi appearing for the petitioner schools is not relevant.

30. So far as regulation 19 of the Regulations is concerned, as submitted by the learned advocate appearing for the Board, the said regulation pertains to eligibility of the candidates for appearing at the examination. Upon perusal of the said regulation, it is very clear that a student has to attend at least 80% of the total number of working days so as to become eligible to appear at the examination. The said fact clearly reveals that regulation 19 does not pertain to change of stream but it pertains to eligibility of a candidate which is based on his attendance.

31. So far as the averments made with regard to guidelines permitting certain students to appear in a

different stream are concerned, in my opinion, the said averments are also not relevant. Upon perusal of the guidelines based on resolutions dated 10th July 1986 and 25th March 1987, it is very clear that a student who has failed in science stream or vocational stream can be permitted to appear in another stream on several conditions. In such a case, a student is not permitted to appear immediately after his failing in science or vocational stream, but he has to study for some time and the student is not permitted to appear at the next trial. In such a case, the Board presumes that during the period when he is not permitted to appear at the examination, the student has completed his studies in another stream. Thus, even the guidelines referred to hereinabove would not permit a student to change his stream in normal circumstances.

32. Moreover, learned advocate Shri Dave appearing for the Board is absolutely right when he has submitted that in no case any student has been permitted to change the stream. Some of the petitioners, who are educational institutions, were permitted to impart training in different streams but if one looks at the permission, it is very clear that such institutions or schools have to start imparting education in different stream gradually and by no stretch of imagination it can be said that such permissions are given to students to change the stream. It is really deplorable that certain schools permitted their students to change the stream after Std. XI though there is no provision for change of the stream. By doing so, such schools have caused damage to several students. The Board should not tolerate such careless attitude of the schools and must not remain a silent spectator of such a situation. Of course, it is for the Board to decide whether it should take some strict action against such schools or to just be a witness to the plight of the students.

33. The Hon'ble Supreme Court has observed in Para 3 in the case of C.B.S.E. & Anr. (supra) that the High Courts should not show undue sympathy towards students by permitting them to appear at the examinations by an interim order. The Supreme Court while dealing with the subject has observed as under :

> "Since the institutions in which the respondent-students have prosecuted their studies are admittedly not affiliated to the Board but the students have been allowed to appear at the examination pursuant to the interim direction of the Court, which is in contravention of the rules

and regulations of the Board, the question that arises for consideration is : Whether the High Court was justified in issuing these impugned directions? This question no longer remains res integra. This Court in several cases deprecated the practice of allowing students to appear provisionally in the examinations of the Board or the University and then ultimately regularising the same by taking a sympathetic view of the mater. In the case of A.P. Christians Medical Educational Society v. Govt. of A.P. (1986) 2 SCC 667 this Court held that the Court will not be justified in issuing direction to the University to protect the interest of the students who had been admitted to the medical college in clear transgression of the provisions of the University Act and the regulations of the University. It was also observed that the Court cannot by its fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself as that would be destructive of the rule of law. In the case of the State of T.N. v. St. Joseph Teachers' Training Institute (1991) 3 SCC 87 : JT (1991) 2 SC 343 this Court held that the direction of admitting students of unauthorised educational institutions and permitting them to appear at the examination has been looked on with disfavour and the students or unrecognised institutions who are not legally entitled to appear at the examination conducted by the Education Department of the Government cannot be allowed to sit at the examination and the High Court committed an error in granting permission to such students to appear at the public examination. All these cases were again considered by a three-Judge Bench of this Court in the case of the State of Maharashtra v. Vikas Sahebrao Roundale (1992) 4 SCC 435 and it was held that the students of unrecognised and unauthorised educational institutions could not have been permitted by the High Court on a writ petition being filed to appear in examination and to be accommodated in recognised institutions. The Court ultimately struck down the direction issued by the High Court. In yet another case, Guru Nanak Dev University v. Parminder Kr. Bansal (1993) 4 SCC 401 another three-Judge Bench of this Court interfered with the interim order passed by the High Court to allow students to undergo internship course even without passing

the MBBS examination."

34. Looking to the law laid down by the Supreme Court and looking to the peculiar facts of the case and in view of an admitted fact that the concerned students have not undergone their studies for 2 years in a particular stream, these petitions cannot be entertained and no relief can be granted to the petitioners. In view of the fact that the petitioners are not entitled to any final relief, in my opinion, there is no question of grant of any interim relief in favour of the petitioners.

35. For the reasons stated hereinabove, the petitions are rejected. Notices discharged.

(A.R. Dave, J.)

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